

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JON M. ECK and JAMES T. ECK, as	:	CIVIL ACTION
Co-Executors of the ESTATES of	:	
MARGARET M. ECK and GEORGE F. ECK,	:	
deceaseds, and JON M. ECK and JAMES T.	:	
ECK in their own right	:	
	:	
	:	
v.	:	
	:	
YELLOW ROADWAY CORPORATION and	:	
YELLOW TRANSPORTATION, INC.	:	NO. 05-6716

**MEMORANDUM AND ORDER**

JACOB P. HART  
UNITED STATES MAGISTRATE JUDGE                      September 5 , 2006

This negligence case involves a motor vehicle accident, in which Margaret and George Eck and Lloyd Jordan, the driver of the Defendants' tractor trailer perished. In their original Complaint, the Plaintiffs alleged among other theories of liability that the Defendants failed to have adequate policies and procedures regarding the hours worked by their drivers, failed to have adequate policies regarding driver fatigue and failed to insure that their drivers were properly rested. During discovery, the Plaintiffs learned that Mr. Jordan had not violated applicable Federal Motor Carrier Safety Regulations regarding hours of service. However, the Plaintiffs did learn that Mr. Jordan was being treated for certain medical and psychiatric conditions. They have filed a Motion to Amend the Complaint to conform to the facts they have discovered.

The Defendants argue that there is no evidence that Mr. Jordan was unfit to drive on the day of the accident. Thus, there is no basis to amend the Complaint. In support of their argument, the Defendants point to the progress notes of Mamdouh Dayem, M.D., Mr. Jordan's treating psychiatrist. Dr. Dayem saw Mr. Jordan just days prior to the accident. He noted that

Mr. Jordan was compliant with his medications, suffered no side effects, and is “almost symptom-free.” (Progress Note attached to Response). Similarly, the Defendants rely on the report of Curtis Rollins, M.D., a forensic pathologist. Dr. Rollins noted that the level of Zolpidem in Mr. Jordan’s blood level at the time of his death would cause no impairment to his driving ability.

The Defendants’ response, however, suffers from selective citation. In the next paragraph of Dr. Rollins’ report, he notes the absence of Modafinil in Mr. Jordan’s blood. “Since this drug is used to treat Narcolepsy as well as other conditions clinical and Scene Correlation is suggested. I cannot say with the information available if the Absence of this drug contributed to his death.” (Rollins’ Report, 4/25/06, attached to Response)(emphasis in original).

This evidence supports the theory of liability included in the proposed Amended Complaint. (Amended Complaint, at ¶ 39 kk - nn). We believe the interests of justice are best served by permitting the amendment. We further note that Plaintiffs’ counsel, although properly amending the First Count of the Complaint (Mrs. Eck’s claim), replacing the references to regulations governing hours of service with references to medical and psychiatric monitoring, failed to properly amend the Second Count of the Complaint (Mr. Eck’s claim). Based on the Motion and the amendments made to Count 1, the Court believes counsel intended the identical revisions to Count Two. We will permit such amendment.<sup>1</sup>

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<sup>1</sup>Throughout their response, the Defendants maintain that Mr. Jordan was an agent of only Yellow Transportation, not Yellow Roadway. A motion for summary judgment is pending on this issue. We will dispose of that issue in an opinion addressing the summary judgment motion.

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YELLOW TRANSPORTATION, INC.	:	NO. 05-6716

**ORDER**

AND NOW, this 5<sup>th</sup> day of September, 2006, upon consideration of the Plaintiffs' Motion Seeking Leave of Court to Amend the Complaint, the response, thereto, and for the reasons stated in the accompanying Memorandum, IT IS HEREBY ORDERED that the Motion to Amend is GRANTED. IT IS FURTHER ORDERED that Count Two of the Amended Complaint is Amended as Count One has been.

BY THE COURT:

/s/Jacob P. Hart

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JACOB P. HART  
UNITED STATES MAGISTRATE JUDGE